Office of the Information Commissioner
Western Australia

Re Conservation Council of Western Australia (Inc.) and Department of Water and Environmental Regulation [2026] WAICmr 24

Decision and reasons for decision

Complainant:	Conservation Council of Western Australia (Inc.)
Agency:	Department of Water and Environmental Regulation
OIC ref:	F2025196
Decision date:	5 November 2026
Sections considered:	Section 12; Schedule 1, clause 6

Decision

1. The agency's decision to refuse the complainant access to *The Murujuga Rock Art Monitoring Program: Monitoring Studies Report 2024* (**2024 MRAMP Report**) is set aside. In substitution, I find:
   - 2 documents (**disputed documents**) fall within the scope of the complainant's access application, namely:
     - 2024 MRAMP Report, Revision B – Issued to DWER for peer review (04/06/2024)
     - 2024 MRAMP Report, Revision C – Updated following peer review (27/08/2024)
   - The disputed documents do not contain exempt matter under clause 6(1) of Schedule 1 to the *Freedom of Information Act 1992* (WA) (**FOI Act**).
2. Accordingly, the disputed documents should be disclosed to the complainant in their entirety.

Summary

3. The main objective when interpreting an access application is to establish the applicant's intended meaning, rather than applying formal legal principles of construction. While applications should not be interpreted narrowly or legalistically, their scope must be sufficiently clear to allow agencies to define and limit their document searches. Where the scope is unclear, agencies should generally seek clarification from the applicant.

4. Where an access application identifies a document by title and also specifies a date range, those two elements should be considered together in determining the intended scope of the application.

5. In the present case, there is significant contextual material supporting the view that the access application intended to capture earlier revisions of the 2024 MRAMP Report. Accordingly, the disputed documents are within scope of the access application.

6. Further, at the time of the agency's decision under the FOI Act, the disputed documents supported the development of interim environmental quality criteria, and their consideration and approval by the Minister for the Environment. As that process has since concluded, disclosure can no longer prejudice it, and the public interest in withholding the disputed documents on this basis no longer applies. Accordingly, the disputed documents are not exempt under clause 6 of Schedule 1 to the FOI Act.

7. My full reasons are set out in the following sections.

Patrick Ky

Patrick Ky
Information Access Deputy Commissioner

5 November 2026

Reasons for decision

Issues for determination

8. The history of this matter is set out in the Background section below.

9. I consider the remaining issues for my determination are:

   - whether the agency identified all documents within the scope of the access application; and
   - if not, are additional documents within the scope of the access application exempt under clause 6 the FOI Act (deliberative processes of Government).

Interpreting the scope of the access application

10. The starting point for determining the scope of an access application is its wording. The application should be interpreted to cover any document that could reasonably be understood to fall within the description the access applicant has used.[1]

11. Section 12 of the FOI Act also requires an access application to provide enough information to enable the requested documents to be identified.[2]

12. Clearly identifying the documents sought is important because the terms of an access application set the parameters for an agency's response under Part 2 of the FOI Act and guide the agency's searches for documents that may fall within that scope.[3] Applicants can assist an agency's search process by describing the document or documents to which they seek access with precision.[4] However, it must be remembered an access applicant may not know exactly what documents exist, nor the way an agency records, categorises and stores documents. Accordingly, section 11(3) of the FOI Act places a corresponding obligation on an agency to assist a person to make an access application that complies with section 12.[5]

13. The Queensland Information Commissioner, in relation to the equivalent provision in that jurisdiction's legislation, has identified the following principles as relevant to interpreting an access application:[6]

   - the main objective is to work out the applicant's intended meaning;
   - an access application should not necessarily be interpreted in the same manner as a statute or other formal legal instrument;
   - where the meaning or scope of an access application is unclear, seeking clarification from the applicant is an appropriate and encouraged practice;
   - it will rarely be appropriate to apply formal principles of legal construction to the wording of an access application in preference to consulting the applicant to clarify their intended meaning;
   - where appropriate, the applicant should be given an opportunity to clarify their intended meaning and agree to more precise wording defining the scope and terms of the access application;

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1 See, e.g., *'AQM' and Comcare (Freedom of information)* [2024] AICmr 246, [17] in relation to the *Freedom of Information Act 1982* (Cth).
2 FOI Act, s 12(1)(b).
3 *Re Guest and Main Roads Western Australia* [2009] WAICmr 24, [20] (***Re Guest***).
4 *Re Guest*, [*20*].
5 *Re Guest*, [20].
6 *Lonsdale and James Cook University* [2015] QICmr 34 [10]-[12]. *See* also *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491, [10].

- where there is no ambiguity in an access application, it is unnecessary to seek clarification about the scope; and
- although access applications should not be interpreted legalistically or narrowly, it is important that agencies be able to restrict their searches for documents with reference to an access application's scope.

14. Although these principles were expressed in the context of imprecise or ambiguous applications, in my view, their underlying rationale is not confined to such cases. Rather, they concern the proper approach to determining the intended scope of an access application and can be equally relevant where, as in the present case, the parties disagree about the scope of the application.

The access application sought earlier revisions of the identified document

15. The complainant's access application requested 'Document title: The Murujuga Rock Art Monitoring Program: Monitoring Studies Report 2024'. The application also included a date range of March 2024 to October 2024.

16. In my view, where an access application identifies a document by title and also specifies a date range, those two elements should be considered together in determining the intended scope of the application.

17. In the present case, there is significant contextual material supporting the view that the access application intended to capture earlier revisions of the report. In particular:
    - the final and now published 2024 MRAMP Report falls outside the date range the complainant specified;
    - the access application was made before the 2024 MRAMP Report was finalised;
    - the 2024 MRAMP Report identifies it has been through 6 revisions (A, B, C, 0, 1 and 2);
    - 3 of those revisions fall within the date range specified in the application;
    - the complainant is likely to have known of the existence of earlier revisions, as the 2023 technical report (**2023 MRAMP Report**) also identified it had been through earlier revisions; and
    - the earlier revisions of the 2023 MRAMP Report occurred within the exact month range specified in the access application (i.e. March to October).

18. These circumstances support interpreting the reference to "Document title: The Murujuga Rock Art Monitoring Program: Monitoring Studies Report 2024" as encompassing earlier revisions of the 2024 MRAMP Report, not just the final, published version. Notably, specifying a date range in the application would have had little practical operation if the application was intended to capture only the final report (or most recent available version at that time).

19. Although the complainant, particularly as a more sophisticated access applicant, could have more explicitly referred to the earlier revisions of the 2024 MRAMP Report in its access application, on balance, I consider the complainant intended to capture the following revisions, expressly referred to in the published 2024 MRAMP Report as:
    - Revision A – Preliminary for review (13/05/2024);
    - Revision B – Issued to DWER for peer review (04/06/2024);
    - Revision C – Updated following peer review (27/08/2024).

20. However, the agency submits Revision A of the 2024 MRAMP Report is not a 'document of an agency' for the purposes of the FOI Act because the agency is not in possession or control of it.[7]

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7 FOI Act, Glossary, cl 4(1).

This is not something the complainant would have necessarily known at the time, and the complainant accepts the agency's submission.

21. Accordingly, I consider Revision B and Revision C of the 2024 MRAMP Report fall within the scope of the application.

The disputed documents are not exempt under clause 6 (deliberative process)

22. The agency claimed the disputed documents are exempt under clause 6 of Schedule 1 to the FOI Act.

23. Clause 6(1) provides:

> Matter is exempt matter if its disclosure —
>
> (a) would reveal —
>
> (i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or
>
> (ii) any consultation or deliberation that has taken place,
>
> in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency; and
>
> (b) would, on balance, be contrary to the public interest.

24. An agency's deliberative processes are its 'thinking processes', involving consideration and reflection on a proposal, decision or course of action.[8]

25. In this case, although I consider the disputed documents arguably contain limited opinion, advice or recommendations recorded in the course of or for the purpose of Government, Minister or agency deliberative processes, I do not consider disclosure of the disputed documents is contrary to the public interest. My reasons are set out below.

Clause 6(1)(a) – the disputed documents contain opinion, advice or recommendations

26. The Government describes the 2024 MRAMP Report as a technical report presenting 'the data collection, laboratory studies and analysis' from the second year of the monitoring program.[9] In my view, much of its content consists of empirical observations, measurements, laboratory results, statistical analysis and technical methodology. Disclosure of this matter would not reveal 'opinion, advice or recommendations'.

27. I accept the disputed documents contain some scientific interpretations or conclusions, primarily directed to the scientific monitoring program. To the extent those interpretations or conclusions may recommend further monitoring, investigation or changes to methodology, my view is it was made in the course of, or for the purpose of, the Government's, a Minister's or the agency's deliberative purpose.

Clause 6(1)(b) – disclosure is not, on balance, contrary to the public interest

28. As a general rule, premature disclosure of documents may be contrary to the public interest where an agency, Minister or Government is still deliberating, and disclosure would undermine the decision-making process or otherwise be demonstrably contrary to the public interest.[10]

29. The agency's internal review decision states the 2024 MRAMP Report supports the development of draft Interim Environmental Quality Criteria (**IEQC**). At the time, the IEQC was subject to formal consideration and approval by the Minister for the Environment. However, that deliberative process

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8 *Re West Australian Newspapers Limited and Western Power Corporation* [2005] WAICmr 10, [75].

9 See Murujuga Rock Art Monitoring Program: Monitoring studies report 2024 (accessed 4 November 2026).

10 *Re Park and City of Nedlands* [2016] WAICmr 14, [39]; *Re Ravlich and State Supply Commission* [1999] WAICmr 37, [25]

has since been completed and the IEQC has been approved and published.[11] Where a deliberative process has come to an end, that process cannot be prejudiced by disclosure of the deliberative document.[12]

30. Further, I note the public interest grounds in favour of disclosure of the disputed documents include:

- transparency and accountability in Government and agency decision-making about environmental matters;
- the contribution of data and information to inform scientific research and to inform public discussion, scrutiny and understanding of environmental matters; and
- the significant public importance of the ongoing environmental issues addressed in the 2024 MRAMP Report, including the public interest in understanding how the 2024 MRAMP Report informs Government and agency decision-making.

31. Accordingly, on the material available to me, I am not satisfied the disputed documents are exempt under clause 6.

11 See Murujuga Rock Art Monitoring Program: Interim Environmental Quality Criteria Update 2025 (accessed 4 November 2026).

12 *Re West Australian Newspapers Limited and Western Power* [2006] WAICmr 10, [65].

Background

32. In an access application dated 19 February 2025, the complainant sought access to:

> Document title: The Murujuga Rock Art Monitoring Program: Monitoring Studies Report 2024
>
> Calibre and Curtin University were appointed to conduct scientific studies under MRAMP's Monitoring Studies Data Collection and Analysis (MSDCA) Plan in March 2022. Under the MSDCA Plan, Calibre and Curtin University were to complete fieldwork campaigns and publish technical reports on the monitoring studies. The first of these reports was published in 2023 and covered the monitoring from March 2022–March 2023. The second technical report, covering the monitoring period April 2023 – March 2024, was originally due for publication in 2024 but has not been released.
>
> Date range: March 2024 to October 2024.

33. By letter dated 20 February 2025, the agency acknowledged receipt of the complainant's access application, in the following terms:

> It is acknowledged that you are requesting information in relation to:
>
> The Murujuga Rock Art Monitoring Program: Monitoring Studies Report 2024.

34. By notice of decision dated 13 March 2025, the agency confirmed the scope of the complainant's access application was for access to 'The Murujuga Rock Art Monitoring Program: Monitoring Studies Report 2024' and decided to refuse the complainant access to the document under clause 6(1) of Schedule 1 to the FOI Act.

35. In a letter dated 8 April 2025, the Environmental Defender's Office, on behalf of the complainant, applied for internal review of the agency's initial decision.

36. The agency confirmed its original decision by notice of internal review decision dated 23 April 2025.

37. The final 2024 MRAMP Report was published in May 2025.

38. On 13 June 2025, on behalf of the complainant, the Environmental Defender's Office applied for external review of the agency's decision, on the following primary grounds:

- the 2024 MRAMP Report includes all versions of the report
- the complainant's access application is for all versions of the 2024 MRAMP Report within the date range of the access application;
- those versions of the 2024 MRAMP Report are not exempt under clause 6(1) because:
    - disclosure of those documents would not reveal deliberations of agencies within the meaning of clause 6(1)(a);
    - even if disclosure would reveal deliberations of agencies, disclosure is, on balance, in the public interest, including because the process is now concluded;
    - the 2024 MRAMP Report is in its entirety, or at least in part, factual or statistical and edited access should be provided.

39. On 15 January 2026, the parties were provided with an officer assessment from the Office of the Information Commissioner (**OIC**). The assessment concluded the then Information Commissioner was likely to consider the further documents are outside the scope of the complainant's access application.

40. The complainant was invited to accept the officer assessment or to provide the OIC with further submissions.

41. The complainant did not accept the initial assessment and, by email dated 27 January 2026, provided further submissions. Those submissions reiterated the grounds on which external review

was sought. It also responded to other matters raised in the officer assessment on which this decision does not ultimately turn.

42. The agency's position throughout the external review process has been it does not consider earlier revisions of the 2024 MRAMP Report fall within the scope of the access application. This is because the complainant:

- requested a specific document relying on the title of that document
- did not specifically refer to draft documents.

43. On 18 September 2026, I gave the parties my preliminary view on the matter. It differed from the officer assessment. My preliminary view was:

- certain earlier revisions of the MRAMP Report are within scope of the access application; and
- those earlier revisions of the MRAMP Report are not exempt under clause 6 of Schedule 1 to the FOI Act.

44. The agency was invited to accept the preliminary view or otherwise make submissions by 2 October 2026. The agency did not make further submissions, despite two further invitations from this office after that date.